

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BILLIE JOE CHAPMAN, Mentally
Handicapped;

Plaintiff,

vs.

STEVE BARRIER and ERIC ROGERS,

Defendants.

8:12CV0370

**FINDINGS AND
RECOMMENDATION**

On January 9, 2015, the Court entered an order (Filing No. 108) which required the parties to prepare a proposed Pretrial Conference Order with Exhibit Lists, submit those proposed documents to the court by 5:00 p.m. on January 18, 2016, and attend a telephonic pretrial conference on January 19, 2016. After his release from incarceration in October of 2015, Plaintiff advised the Southern District of Iowa that his address had changed. (See Ex A). Plaintiff did not update his address with this court. However, counsel for the defendants did advise this court of Plaintiff's new address as provided to the Southern District of Iowa. (Filing No. 146).

Thereafter, this court's orders were sent to the new address. Those mailings were not returned. (See docket entries 149-151).

Counsel for Defendants Rogers and Barrier sent letters to Plaintiff on December 24, 2015, and on January 8, 2016, providing a phone number to Plaintiff and soliciting his input for preparing a proposed and joint pretrial conference order. (See Exs. B & C). The letters were addressed to Plaintiff, included a return address, and were not returned. Plaintiff did not contact defense counsel to prepare for the pretrial conference. And this court did not receive a proposed pretrial conference order or exhibit list from Plaintiff. (Filing No. 153, audio file).

Plaintiff did not attend the pretrial conference today and did not call my chambers to explain his absence.

Accordingly,

IT IS RECOMMENDED to the Honorable Richard G. Kopf, United States District Judge, pursuant to 28 U.S.C. § 636(b), that Plaintiff's complaint be dismissed with prejudice for want of prosecution.

The parties are notified that failing to file an objection to this recommendation as provided in the local rules of this court may be held to be a waiver of any right to appeal the court's adoption of the recommendation.

IT IS ORDERED that the trial of this case, previously set for January 25, 2016, is continued pending further order of the court.

January 19, 2016.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge

In The United States District Court
For the Southern District of Iowa

TO THE CLERK, AND COURTS

Billie Joe Chapman
Plaintiff / Petitioner

vs.

All cases below
Defendants / Respondents

See case #'s below

To The Court, Change
of address

Billie Joe Chapman
 4805 Holmes Street
 Omaha, NE. 68117

Unit 104

To all cases that are pending in the United
States District Court for the Southern District of Iowa

Case # 4:15-CV-00205

Case # 4:15-CV-00207

Case # 4:15-CV-00296

Case #

Case #

Respectfully Submitted / Notified
10 / 14 / 2015

Billie Joe Chapman
Billie Joe Chapman

Certificate of Service

I hereby Certify - Notify by U.S. pre-paid Postage on 10-14-
2015 Change of address to all parties

Billie Joe Chapman

Billie Joe Chapman
4805 Holmes Street

New address

Unit 104
Omaha, NE 68117

zip



Exhibit B

POTTAWATTAMIE COUNTY ATTORNEY'S OFFICE

227 South 6th Street

Suite 500

Council Bluffs, Iowa 51501

County Attorney

Matthew D. Wilber

Chief Deputy

Jon J. Jacobmeier

Telephone 712-328-5649 Facsimile 712-328-5753

Assistants

Leanne A. Gifford

Martha A. Heinicke

Dawn M. Landon

Daniel J. McGinn

Thomas G. Nelson

Margaret Popp Reyes

Christine M. Shockey

Kerrie L. Snyder

Eric D. Strovers

Shelly Sedlak Sudmann

Kenneth E. Tyler

Amy L. Zacharias

December 24, 2015

Billie Joe Chapman
4805 Holmes Street, Unit 104
Omaha, NE 68117

RE: Chapman v. Anderson, *et al.*, U.S. District Court - Nebraska 8:12CV370

Dear Mr. Chapman:

Your lawsuit against my clients Steve Barrier and Eric Rogers is scheduled for trial before Judge Kopf next month (Jan. 25, 2016). The Civil Rules of the United States District Court for the District of Nebraska outline the procedures for civil trials. Under NECivR 16.2(a)(2), the parties are to jointly prepare and present to the judge at pretrial conference a proposed Order on Final Pretrial Conference.

You and I need to discuss a number of issues so that we may jointly prepare the Order on Final Pretrial Conference, determine the issues to be decided by the jury, and prepare jury instructions.

Please call me at your earliest convenience to schedule a time to meet; 712-328-5649.

Sincerely,

Leanne A. Gifford

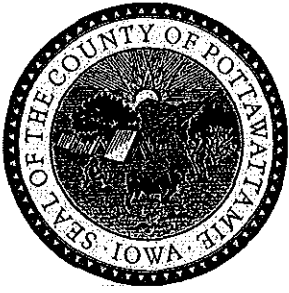


Exhibit C

POTTAWATTAMIE COUNTY ATTORNEY'S OFFICE

227 South 6th Street

Suite 500

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Matthew D. Wilber

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Eric D. Strovers
Shelly Sedlak Sudmann
Kenneth E. Tyler
Amy L. Zacharias

January 8, 2015

Billie Joe Chapman
4805 Holmes Street, Unit 104
Omaha, NE 68117

RE: Chapman v. Anderson, *et al.*, U.S. District Court - Nebraska 8:12CV370

Dear Mr. Chapman:

I am writing as a follow-up to my letter dated December 24, 2015. In that letter I requested that you contact me in order to jointly prepare a proposed Order on Final Pretrial Conference as required by the United States District Court for the District of Nebraska local rule NECivR 16.2(a)(2). The letter has not been returned by the Postal Service, so the address I have appears to be valid.

We need to meet and discuss a number of issues for the trial, or at least exchange information regarding witnesses, exhibits, undisputed facts, and issues for the judge to determine. (My letter of December 24, 2015 referenced issues to be decided by the jury and jury instructions; that was an error, this case will be a bench trial, without a jury.)

Please call me immediately at 712-328-5649. If you call after hours, my extension is 3129. I do not have a phone number to call you, so please leave a number on my voicemail. Although the scheduling order states the proposed order may be emailed no later than Monday January 18, the Pottawattamie County Courthouse is closed that day. We need to email the proposed order no later than Friday, January 15.

Sincerely,

A handwritten signature in cursive script that reads "Leanne A. Gifford".

Leanne A. Gifford